

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 110, “Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition,” Iowa Administrative Code.

The rules in Chapter 110 set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their businesses hazardous to their policyholders, creditors, or the general public. This chapter shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of Iowa, nor shall this chapter be interpreted to supersede any laws or parts of laws of Iowa.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed Chapter 110 on or before October 12, 2010. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to matthew.hargrafen@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held on October 12, 2010, at 10 a.m. in the Lobby Conference Room of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing and mobility impairments, should contact the Insurance Division and advise of specific needs.

These rules are intended to implement Iowa Code section 505.8.

The following amendment is proposed.

Adopt the following new 191—Chapter 110:

CHAPTER 110

STANDARDS AND COMMISSIONER’S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

191—110.1(505) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

191—110.2(505) Purpose. The purpose of this chapter is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public. This chapter shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of Iowa, nor shall this chapter be interpreted to supersede any laws or parts of laws of Iowa. Every insurer shall be subject to this chapter.

191—110.3(505) Definition.

“*Insurer*” means a licensed insurer under Title XIII of the Iowa Code and fraternal benefit societies licensed under Iowa Code chapter 512B.

191—110.4(505) Standards. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Iowa might be deemed to be hazardous to its policyholders, creditors, or the general public. The commissioner may consider:

110.4(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries.

110.4(2) The National Association of Insurance Commissioners' Insurance Regulatory Information System and its other financial analysis solvency tools and reports.

110.4(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

110.4(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

110.4(5) Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

110.4(6) Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

110.4(7) Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations which, in the opinion of the commissioner, may affect the solvency of the insurer.

110.4(8) Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer.

110.4(9) Whether any "controlling person" of an insurer is delinquent in the transmitting or payment of net premiums to the insurer.

110.4(10) The age and collectability of receivables.

110.4(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position.

110.4(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry.

110.4(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.

110.4(14) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

110.4(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

110.4(16) Whether the insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.

110.4(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice.

110.4(18) Whether management persistently engages in material underreserving that results in adverse development.

110.4(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as they mature.

110.4(20) Whether the insurer's underwriting expenses are in excess of 70 percent of net premiums for three years, excluding companies that write more than 75 percent of gross premium in surety. Companies licensed under Iowa Code chapters 508 and 512B are excluded from this subrule.

110.4(21) Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

191—110.5(505) Commissioner's authority.

110.5(1) For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:

- a.* Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
- b.* Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and regulations;
- c.* Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account, or the financial condition of the debtor;
- d.* Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guaranty not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

110.5(2) If the commissioner determines that the continued operation of the insurer licensed to transact business in Iowa may be hazardous to its policyholders, creditors, or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

- a.* Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- b.* Reduce, suspend, or limit the volume of business being accepted or renewed;
- c.* Reduce general insurance and commission expenses by specified methods;
- d.* Increase the insurer's capital and surplus;
- e.* Suspend or limit the declaration and payment of a dividend by the insurer to its stockholders or to its policyholders;
- f.* File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;
- g.* Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- h.* Document the adequacy of premium rates in relation to the risks insured;
- i.* File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;
- j.* Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;
- k.* Provide a business plan to the commissioner in order to continue to transact business in the state;
- l.* Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

110.5(3) If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

110.5(4) An insurer subject to an order under subrule 110.5(2) may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to 191—3.12(17A). The notice of hearing shall state the time and place of hearing and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the

hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be in Polk County, Iowa. The commissioner shall hold all hearings under this subrule privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

191—110.6(505) Judicial review. Any order or decision of the commissioner shall be subject to review in accordance with 191—3.27(17A) at the instance of any party to the proceedings whose interests are substantially affected.

191—110.7(505) Separability. If any provisions of this chapter be held invalid, the remainder shall not be affected.

191—110.8(505) Effective date. This chapter is applicable on or after [insert effective date of these rules].

These rules are intended to implement Iowa Code section 505.8.